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DECISION



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**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-205039

DATE: December 8, 1981

MATTER OF: R. J. Mack Company

DIGEST:

A bid, submitted in response to a total small business set-aside, which failed to indicate whether the bidder would furnish supplies manufactured by a small business concern was properly rejected as nonresponsive and may not be corrected.

R. J. Mack Company protests the National Aeronautics and Space Administration's (NASA) rejection of its bid as nonresponsive under invitation for bids (IFB) No. 10-0142-1. R. J. Mack believes it should be permitted to correct the erroneous small business representations it included in its bid. Presumably the bid would be responsive if correction is permitted.

We find no legal merit to the protest.

The IFB sought bids for a large crane and set aside the procurement for small business concerns only. In its bid, R.J. Mack completed the representations in Standard Form 33 that it was a small business firm and a regular dealer in the supplies offered, but did not check the representation that the supplies would be manufactured or produced by a small business concern. Instead, under the Place of Performance clause, it indicated that the crane would be manufactured by Cleveland Crane and Engineering, Division of McNeil Corp., a large business for the purpose of this procurement. After bid opening, R. J. Mack attempted to correct its bid to reflect that it will assemble the crane components and consequently will be the manufacturer of the crane in this procurement.

This Office has consistently held that if a bid on a total small business set-aside fails to establish the legal obligation of the bidder to furnish products

manufactured or produced by small business concerns, the bid is nonresponsive and the bidder is ineligible for an award, Culligan, Inc., 58 Comp. Gen. 307 (1979), 79-1 CPD 149. This is so because in the absence of such a representation a small business bidder would be free to provide the supplies from either small or large business manufacturers as its private business interests might dictate, Jack Young Associates, Inc., B-195531, September 20, 1979, 79-2 CPD 207, and a small business could operate merely as a conduit or broker for a large business concern.

Moreover, a nonresponsive bid may not be changed or considered for correction since to permit a bidder to make its bid responsive after bid opening would be tantamount to permitting the submission of a new bid. See Dayton Chemical Corporation, B-200122, May 13, 1981, 81-1 CPD 373. Thus, Mack's bid may not be changed after bid opening to establish the bidder's eligibility for the set-aside. Jack Young Associates, Inc., *supra*.

The protest is summarily denied.

for *Whitton J. Fowler*
Comptroller General
of the United States